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NO. 92-884

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1992

MONICA L. MOORE,

Petitioner,

vs.

GWINNETT COUNTY; J. O. MEADOWS; XYZ COMPANY; and JOHN DOE, jointly and severally,

Respondents.

BRIEF IN OPPOSITION TO PETITIONER'S WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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21 pp

Question Presented

Whether qualified immunity is available as a defense under 42 U.S.C. Section 1983 to claims that an officer has used excessive force in violation of the Fourth Amendment's prohibition against unreasonable seizures.

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STATEMENT OF THE CASE

Respondents object to the recitation of the facts included in Petitioner's Statement of the Case as being incomplete and misleading and as including matters outside the record. Respondent submits for the Court's consideration the discussion of the facts contained in the Eleventh Circuit's opinion below:

> The record, viewed favorably to appellee Moore, evinces a confrontation between Moore and Meadows resulting in flared tempers.

In August, 1988, Moore was in her eighth month of pregnancy. On August 5, she encountered a road barricade as she travelled to visit her husband at his place of work. Moore stopped at the barricade, rolled down her window, and gestured to Officer Meadows, who was standing some distance away. Although Officer Meadows acknowledged her gesture with a wave, he did not immediately approach her car. Instead of waiting, Moore drove around the barricade - contemplating that the officer would pursue her if there was a problem. Moore Depo. at 13-14. He did. Meadows followed Moore in his patrol car with lights flashing and siren sounding until she stopped in a parking lot. She immediately ran from the car into a nearby building. She later emerged from the building - which proved to be her husband's place of work - accompanied by her husband, brother-in-law, and father-in-law. Officer Meadows, still standing in the parking lot, asked for her driver's license and advised her that he was going to write her a ticket for

running the roadblock. Moore flatly refused to show Meadows her driver's license. She instead walked away from the officer, turned off the ignition on her car, retrieved her purse from the car, and attempted once again to proceed past Officer Meadows and enter the building. Meadows announced that he was taking Moore to jail and attempted to restrain her. He "grabbed" her with both of his arms - taking her left arm in one hand and placing his right arm across her abdomen. Moore Depo. at 29. Moore pivoted loose from the officer and fled into the building.

> At this point, Moore's husband interposed himself and advised Meadows that Moore was eight months pregnant. Mr. Moore then entered the building and attempted to persuade his wife to produce her license. Although Moore failed to locate her license, she eventualy provided her name to the officer. After calling in Moore's name on his patrol car radio, Meadows

learned that her license was suspended. Following these events, Officer Meadows charged Moore with failure to obey a traffic control device and driving on a suspened license, then permitted Moore's husband to drive her to Gwinnett County Jail where she was detained for three hours.

> Two days later, Moore experienced unpleasant physical symptoms and noticed a sensation that the fetus she was carrying had become inactive. She visited her treating obstetrician the next day and was advised that the fetus' heart was beating and that she should continue her regular visits. Approximately a week after the incident, Moore was advised that the fetus was dead. Three days later, the fetus was stillborn.
>
> The record contains only one expert medical opinion assessing these events - that of Moore's obstetrician, Dr.

> Khalad Goheer. Dr. Goheer rendered the following opinions: (1) that he saw at delivery no signs of maternal or fetal injury which would have caused the fetus' death; (2) there was no cause apparent to him for the fetus' death; and, (3) some cause other than an injury to Moore caused the death. *See* Goheer Aff., R1-12 Ex. B. The record also contains the opinions of Moore and her husband to the effect that the child's appearance at birth led them to believe it may have been injured. Moore Depo. 35-36; James Moore Depo. at 37.

Moore v. Gwinnett County, 967 F.2d 1495, 1496-1497 (11th Cir. 1992).

SUMMARY OF ARGUMENTS

A. THIS CASE PRESENTS NO SUBSTANTIAL QUESTION FOR REVIEW

This case involves the evaluation of a

police officer's qualified immunity defense to an arrest-related excessive force claim. The court below, analyzed the objective reasonableness of Respondent Meadows' action in light of the law which was at the time of Petitioner's 1988 arrest clearly established in the Eleventh Circuit. Graham v. Conner, 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed. 2d 443 (1989), had not yet been decided when Respondent Meadows arrested Petitioner. The Eleventh Circuit thus appropriately evaluated the qualified immunity defense with reference to the pre-Graham v. Conner four-part analysis which prevailed in the circuit in 1988.

B. **THE ELEVENTH CIRCUIT'S DECISION DOES NOT CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT**

Petitioner asserts that the decision of the court below is in direct conflict with Graham v. Conner, supra. However, the issue before this Court in Graham was materially different from the issue decided by the Eleventh Circuit in the

instant action. Graham involved a substantive analysis of an excessive force claim, while this case deals with qualified immunity. A qualified immunity defense necessitates an inquiry regarding the law which was clearly established at the time the claim accrued. Thus, the Eleventh Circuit properly applied the pre-Graham v. Conner standards prevailing in this circuit in analyzing Respondent Meadows' qualified immunity defense.

C. **THIS CASE PRESENTS NO CONFLICT IN THE CIRCUITS REQUIRING A DECISION OF THIS COURT**

Despite Petitioner's assertion to the contrary, there is no real conflict among the circuit courts regarding the availability of a qualified immunity defense to a Fourth Amendment excessive force claim. All but two of the circuits have expressly recognized the defense, and the two remaining circuits have simply not addressed the issue. Furthermore, even if there were a conflict, the undisputed facts in this

case would render this an inappropriate vehicle for addressing it: Under Graham v. Conner, Petitioner's claim on the merits fails as a matter of law.

ARGUMENT IN OPPOSITION TO PETITION FOR CERTIORARI

A. THIS CASE PRESENTS NO SUBSTANTIAL QUESTION FOR REVIEW

This Court has long recognized that law enforcement officers may be entitled to qualified immunity from suit in certain actions brought under 42 U.S.C. Section 1983. Pierson v. Ray, 386 U.S. 547, 557, 87 S.Ct., 18 L.Ed. 2d 288 (1967). Generally, a government official has qualified immunity from civil liability for claims arising from the performance of the official's discretionary functions if the official's conduct did not violate statutory or constitutional rights which were clearly established at the time. Harlow v. Fitzgerald,

457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed. 2d 396 (1982). In analyzing a qualified immunity defense, a court should be particularized and fact-specific in determining what law was reasonably established at the time the claim arose. Anderson v. Creighton, 483 U.S. 635, 638-640, 107 S.Ct. 3034, 97 L.Ed. 2d 523 (1987). In the instant action, the Eleventh Circuit appropriately applied the foregoing principles in determining that Respondent Moore was entitled to qualified immunity from suit on Petitioner's excessive force claim.

Respondent Meadows arrested Petitioner on August 5, 1988, nearly a year before this Court rejected the substantive due process approach to determining whether a police officer had utilized excessive force during an arrest. Graham v. Conner, 490 U.S. 386, 109 S.Ct. 1865, 104 L. Ed. 2d 443 (1989). At the time of the 1988 incident, the Eleventh Circuit had clearly established a four-part test by which it determined whether excessive force had been used in the course of an

arrest. Leslie v. Ingram, 786 F. 2d 1533, 1536 (11th Cir. 1986). Accordingly, in the action now before this Court, the Eleventh Circuit framed the excessive force/qualified immunity issue as follows:

> Whether Officer Meadows is entitled to qualified immunity against Mrs. Moore's excessive force claim depends on whether his actions were objectively unreasonable under the law which was clearly established at the time of the incident.

Moore v. Gwinnett County, 967 F. 2d at 1498. Framimg the issue in such a fashion was completely consistent with this Court's decisions concerning qualified immunity. See, e.g., Frohmader v. Wayne, 958 F. 2d 1024, 1026-1027 (10th Cir. 1992). This case thus presents no substantial question concerning qualified immunity analysis for the Court's consideration.

B. **THE ELEVENTH CIRCUIT'S DECISION DOES NOT CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT**

Petitioner argues that the decision below conflicts with controlling precedent, specifically Graham v. Conner, supra. However, as this Court specifically noted, Graham did not involve a qualified immunity defense. Graham v. Conner at fn. 12. In Graham, this Court instead addressed the standards by which an arrest-related excessive force claim should be substantively evaluated. The distinction is important where, as here, the substantive law (such as the standard for determining whether an arrestee was subjected to constitutionally excessive force) changes between the time of the incident and the time that a defendant raises the qualified immunity defense in court.

Nothing in the Eleventh Circuit's opinion suggests that Petitioner's excessive force claim would have been judged by any standard other than

Graham v. Conner's Fourth Amendment objective reasonableness test had Respondent Meadows' qualified immunity defense failed. Accordingly, the decision of the court below does not conflict with decisions of this Court.

C. THIS CASE PRESENTS NO CONFLICTS AMONG THE CIRCUITS REQUIRING A DECISION OF THIS COURT

Petitioner asserts that there is a conflict among the circuits concerning the availability of qualified immunity as a defense to a Fourth Amendment excessive force claim. Respondents can discern no such conflict. While the analytical details differ somewhat from circuit to circuit, all circuits other than the First and Third Circuits have expressly recognized that an arresting officer may raise qualified immunity as a defense to an excessive force claim. See, e.g., Posr v. Doherty, 944 F.2d 91 (2d Cir. 1991); Mensh v. Dyer, 956 F.2d 36 (4th Cir. 1992); King v. Chide, 974 F.2d 653 (5th Cir. 1992); Yates v. City of Cleveland, 941 F.2d 444

(6th Cir. 1991); Elliott v. Thomas, 937 F.2d 338 (7th Cir. 1991); Fitzgerald v. Patrick, 927 F.2d 1037 (8th Cir. 1991); Vaco v. Baltad, 934 F.2d 214 (9th Cir. 1991); Frohmader v. Wayne, 958 F.2d 1024 (10th Cir. 1992); Hunter v. District of Columbia, 943 F.2d 69 (D.C. Cir. 1991). The First and Third Circuits appear not to have addressed the issue directly, but neither has indicated that the defense would be inapplicable to an arrest-related excessive force claim.

While it might be appropriate in a proper case for this Court to examine the details of the various circuits' approaches to qualified immunity in Fourth Amendment excessive force cases, the instant action does not provide a suitable vehicle for such an examination. The facts of the case now before this Court are such that any court in any circuit would be compelled to find Respondent Meadows is indeed entitled to qualified immunity. As the court below concluded,

> ...[T]he facts indicate a need to

initiate physical restraint as Moore was attempting to flee for a second time. Moreover, the facts are clear that Meadows restrained Moore simply by putting his hands around her....We also note that the officer did not apply any greater (and potentially disproportionate) force after Moore spun loose from his restraint. Officer Meadows did not strike Moore, throw her to the ground, pull her against him, or use or brandish a weapon.

> Under the circumstances, common sense dictates a finding that Officer Meadows's use of force was reasonable according to established standards.... Accordingly, we find no excessive force sufficient to indicate that Officer Meadows violated any clearly established constitutional right.

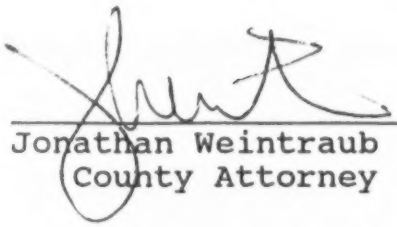
Moore v. Gwinnett County at 1499. Indeed, absent the qualified immunity defense, Respondent Meadows would be entitled to summary judgment on the underlying excessive force claim under the

Graham v. Conner objective reasonableness test. This case thus presents no conflict in the circuits for this Court to resolve.

CONCLUSION

Respondent respectfully request that the Petition for Certiorari be DENIED. The Eleventh Circuit Court of Appeals correctly analyzed and decided a straightforward issue - whether, under the undisputed facts of this particular case, Respondent Meadows was entitled to qualified immunity against Petitioner's excessive force claim. The court below properly examined the law which was clearly established at the time of Petitioner's arrest in finding that Respondent Meadows was indeed entitled to qualified immunity. There are no issues in this action rendering it appropriate for a grant of certiorari.

Respectfully submitted this 18th day of December, 1992.



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